Cr A 647/98

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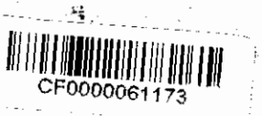
XII-189 / (Jail)
C. J. P. R. 11/94/2,000



APPEAL OF PRISONER

D3(97)

No. 6914 Name रामू कुम्हार

Father's name बरतिया कुम्हार निवासी कुम्हार पारा ग्राम - खल्लारी थाना - बालोद

Residence जिला - दुर्ग (म.प्र.) Age 30 वर्ष

Sentenced to आजीवन कारावास On 18/12/97

Under section 302 भा.द.वि. by III अपर सत्र न्यायाधीश दुर्ग (म.प्र.)

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement .....

2 Date on which copy received .....

3 Date on which Appeal sent .....

4 Whether the prisoner wishes to be represented or not – Yes / No

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No. 6914 Name रामू कुम्हार S/O बरतिया कुम्हार

Confined in केन्द्रीय Jail रायपुर (म.प्र.)

No. 55/वि./98 Dated 26/2/1998

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ मा.अति. जिला न्यायाधीश महोदय मा.उच्च न्यायालय (म.प्र.) जबलपुर

togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

संलग्न :- S.T. No. 304/97 की सत्य प्रतिलिपि।

Superintendent
Superintendent,
Central Jail Raipur (M.P.)

Date of receipt in ..... office 13

Date of receipt record to accompany the Memo of Appeal to the Appellate court

High Court of Madhya Pradesh
JABALPUR
Recd. on 9 MAR 1998
Registration No. 53
Receipt Clerk

No ..... Dated 199

Forwarded to the .....

Date of receipt in Appellate Court .....

(P. T. O.)

(25)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A. 647/98 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO.647/1998

Appellant : Ramu

Vs.

Respondent : State of Madhya Pradesh

Smt. Kiran Jain, learned counsel for the appellant.

3. Shri J.D.Bajpai, Shri J.D.Bajpai, Additional Public Prosecutor and Shri M.P.S. Bhatia on behalf of the respondent/State.

ORAL JUDGMENT
(Delivered on 24-01-2006)

L.C.Bhadoo, J

By this appeal accused/appellant has questioned the legality of the judgment of conviction and order of sentence dated 18.12.1997 passed by Third Additional Sessions Judge, Durg in Session Trial No. 304/97 whereby learned Additional Sessions Judge after holding accused/appellant guilty for the commission of an offence under Section 302 of the Indian Penal Code for committing the murder of Bharat sentenced him to undergo Imprisonment for life and pay fine of Rs. 2,000/- in default of payment of fine to further undergo R.I. for six months.

2. The case of the prosecution is that on 22.06.1997 deceased Bharat and Rameshwar were working in the agricultural field of one Barsan of village

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Khallari, at about 6.00 p.m. they stopped the work and Rameshwar went to attend the call of nature. In the meanwhile, accused/appellant Ramu came on the scene and attacked Bharat with axe 2-3 times, on which Bharat raised cries. On hearing the cries Rameshwar came on the scene, however, the accused fled away from the place of occurrence. Rameshwar came and informed Banshi and hearing this Banshi, Parsadi, Barsan, Rajaram, Dhiraaj went to the field of Barsan and saw that Bharat was lying dead in the pool of blood. There was injury on the left shoulder ~~and~~ near the left scapular region and also on the head. Blood was oozing out of the injuries and axe was lying at a distance of 4-5 ft. Thereafter, Kotwar Rewatram was informed about the incident. Kotwar Rewatram and P.W.1 Sammal Singh went to the police station where Sammal Singh lodged the report P-1. Station House Officer after registering the offence under Section 302 of the IPC, left for the scene of occurrence. After giving notice (P-2) to the Panchas, he prepared Panchanama of the body of the deceased (P-3). Patwari prepared spot map (P-4A) along with a detailed report (P-4). Merg intimation was given. Axe, the weapon of offence was taken into possession under P-6. Plain earth and bloodstained earth, one Tiffin box were taken into possession under P-7. The investigating officer prepared site plan (P-8). Body of the deceased was sent for postmortem examination to Govt. Hospital, Balod under P-9. Dr. J.S.Sahu (P.W.6) conducted the postmortem examination on the body of Bharat and submitted the postmortem report (P-18). After completion of investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Balod who in turn committed the case to the Sessions Judge, Durg from

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	where the Additional Sessions Judge, Durg received the case on transfer for trial.	
	4. Prosecution in order to establish charge against the accused/appellant has examined as many as 10 witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the prosecution evidence and stated that he is innocent and the witnesses have deposed against him on account of animosity and he has been falsely implicated in the crime.	
	5. Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused/appellant convicted and sentenced the accused as mentioned in paragraph-1 of this judgment.	
	6. We have heard Smt. Kiran Jain on behalf of the appellant and Shri J.D.Bajpai, Additional Public Prosecutor and Shri M.P.S. Bhatia on behalf of the State.	
	7. Homicidal nature of death of Bharat is not in dispute.	
	8. As far as involvement of the accused/appellant in committing the murder of Bharat is concerned, learned counsel for the accused/appellant has argued that conviction has been recorded on the basis of ~~statement~~ evidence of solitary witness (P.W.10) Rameshwar who is none else than the brother of	

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the accused and as there was strained relationship between Rameshwar and the accused, he has deposed against the accused.

9. On the other hand learned counsel for the respondent/State supported the judgment of the trial Court.

10. In order to appreciate the argument of the counsel for the appellant we have scrutinized the evidence of P.W.10 Rameshwar who has stated that on the fateful day he along with Bharat went to the agricultural field, at about 6.00-6.30 p.m., they finished their work and thereafter he left for attending the call of nature. Bharat informed him that he was going to the village. In the meanwhile, this witness heard the cries of Bharat i.e. "save Rameshwar, run Rameshwar". He came towards the side where Bharat was crying and saw that Bharat and Ramu were coming running towards him and Ramu attacked Bharat with axe. Bharat was saying "don't attack, don't attack". He tried to save Bharat but Ramu attacked Bharat with axe as a result of which Bharat fell on the ground. He also saw the injuries on the neck and head of Bharat. Thereafter he left for the village, on the way Maniram and Maharin met him, he informed them about the incident. This witness has stated that even after dissuasion by him the accused/appellant continued assaulting Bharat. In the cross examination of this witness the defence counsel has not been able to elicit anything which shows that this witness has deposed against his own brother on account of animosity. Axe, the weapon of offence was recovered from the place of occurrence. P.W.7 Maharin and P.W. 8 Maniram have categorically stated that in the evening at about 5/5.30 p.m. when they

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were coming from the agricultural field, by the time they reached near the village, they saw that accused Ramu was coming carrying axe in his hands, on enquiry he replied that he was going to the forest for cutting the wood. Even though these witnesses have been declared hostile. But fact remains that these witnesses saw accused/appellant going towards the forest carrying axe in his hands in the evening, therefore to this extent the evidence of Rameshwar P.W.10 regarding accused attacking Bharat with axe stands corroborated by the evidence of P.W.7 & P.W.8. Evidence of Rameshwar P.W.10 further stands corroborated by the medical evidence in which Dr.J.S.Sahu P.W.6 has stated that on 23.06.97 he had examined the body of Bharat and found that there was incised wound below the left ear in the size of 2 x 3/4" x 2 3/4" which are extending up to right mandible. There was an incised wound in the size of 2 1/2 + 2 1/4" on the left cervical region, therefore the injuries which were found on the body of deceased Bharat were corresponding to what Rameshwar has stated in his evidence. Even in the First Information Report lodged by Sammal Singh, name of the accused is appearing.

11. In view of the above evidence, we are of the considered opinion that it is established that the accused/appellant was the author of the crime in question., therefore, we do not find any illegality or infirmity in the judgment of trial Court and the appeal being devoid of substance is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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